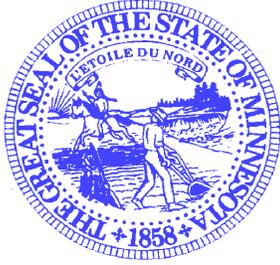


State of Minnesota - State Court Administration



REQUEST FOR PROPOSALS

4th Judicial District, Hennepin County
District Court
Records Digitization Project
Information Technology Division

September 10, 2010

State of Minnesota – State Court Administration

REQUEST FOR PROPOSALS IV-D Reimbursement of Direct Costs

I. REQUEST FOR PROPOSAL.

- A. **DEFINED.** The State of Minnesota, Fourth Judicial District (State) is using a competitive selection process to select a vendor to digitize case and non-case records to include, but not limited to, paper documents, microfilm, microfiche, court ledgers, receipt books and various sized hand written documents/ledgers. This is not a bid but a request for proposals that could become the basis for negotiations leading to a contract with a vendor.
- B. **RIGHT TO CANCEL.** THE STATE IS NOT OBLIGATED TO RESPOND TO ANY PROPOSAL SUBMITTED NOR IS IT LEGALLY BOUND IN ANY MANNER WHATSOEVER BY THE SUBMISSION OF A PROPOSAL. THE STATE RESERVES THE RIGHT TO CANCEL OR WITHDRAW THE REQUEST FOR PROPOSAL AT ANY TIME IF IT IS CONSIDERED TO BE IN ITS BEST INTEREST. IN THE EVENT THE REQUEST FOR PROPOSALS IS CANCELLED OR WITHDRAWN FOR ANY REASON, THE STATE SHALL NOT HAVE ANY LIABILITY TO ANY PROPOSER FOR ANY COSTS OR EXPENSES INCURRED IN CONNECTION WITH THIS REQUEST FOR PROPOSALS OR OTHERWISE. THE STATE ALSO RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS, OR PARTS OF PROPOSALS, TO WAIVE ANY INFORMALITIES THEREIN, AND TO EXTEND PROPOSAL DUE DATES.
- C. **AMENDMENTS.** ANY AMENDMENTS TO THIS RFP WILL BE POSTED ON THE MAIN STATE COURT WEBSITE (www.mncourts.gov).
- D. **ANSWERS TO RFP QUESTIONS.** ANSWERS TO RFP QUESTIONS WILL BE POSTED TO THE MAIN STATE COURT WEBSITE (www.mncourts.gov).
- E. **THE FULL VERSION OF THE RFP INCLUDES APPENDIXES I, II, III, IV, V, AND VI.** THE DOCUMENT IS AVAILABLE AT THE STATE REGISTER SITE (<http://www.comm.media.state.mn.us>) AND THE MAIN STATE COURT WEBSITE (www.mncourts.gov).

II. PROJECT OVERVIEW.

The State is seeking a vendor to digitize case and non-case records to include, but not limited to, paper documents, microfilm, microfiche, court ledgers, receipt books and various sized hand written documents/ledgers.

The key purpose for converting these records is for ease of access, archival preservation, and dissemination and retrieval of information via the internet, intranet and other internal applications for retrieving digital images. The State prefers that digitized records be converted and exported into text searchable (Adobe) .PDF file format with Optical Character Recognition “OCR” search attributes using a minimum of 300 DPI for all digitized images.

The Fourth Judicial District serves only Hennepin County and is the state's largest trial court, receiving nearly 800,000 cases each year. The 62 judges, 16 referees and more than 550 staff members strive to provide an accessible, fair, courteous, efficient and innovative system of justice. Court records selected for scanning were produced over the course of the court’s long history beginning with the creation of Hennepin County in 1852 by the Minnesota Territorial Legislature.

The State’s microfilms and microfiche “may” present a number of significant problems in image capture, including un-blipped frames with a range of tonal values, positive film, images two up on a frame, and density that is less than desirable.

Indexing fields will generally be reliant upon the type of records, division needs, image indexing and retrieval efficiencies, and may include up to 6 indexing fields per captured image/document. The number of indexing fields is not prescribed but will be determined by the State and vendor to ensure the most efficient and cost-effective document management practices for the unique variety of case and non-case records.

Records to be selected for this project are located at various locations within the Fourth Judicial District and include offsite storage of records at Iron Mountain Underground Vault and Storage. On-site custody of State records includes the C Tower located in the Hennepin County Government Center, 300 South Sixth Street, Minneapolis, MN 55487, and State facilities located at various downtown Minneapolis locations as follows:

Hennepin County Public Safety Facility
401 4th Avenue South
Minneapolis , MN 55415

Juvenile Justice Center
590 Park Avenue
Minneapolis , MN 55415

Minneapolis City Hall
350 South 5th Street, Rm. #306
Minneapolis , MN 55415

Family Justice Center
110 South 4th Street
Minneapolis , MN 55401

and at satellite State Court facilities:

Division II (Brookdale)
6125 Shingle Creek Parkway
Brooklyn Center , MN 55430

Division III (Ridgedale)
12601 Ridgedale Drive, Suite 300
Minnetonka , MN 55305

Division IV (Southdale)
7009 York Avenue South
Edina , MN 55435

III. PROJECT OBJECTIVES

- A. High-quality digital images at no less than 300 DPI that reproduce the microfilm frames or paper originals shall be created. Successful and efficient capture of these images may require careful analysis of the microfilm and may require sophisticated methods for capture.
- B. An index file needs to be created for each of the converted images depending upon the type of record created and will depend on the various needs of divisions and departments to accurately search, and efficiently retrieve, maintain and manage digitized records.
- C. The scanned images to be produced shall meet state statutory requirements and follow the guidelines set forth by Minnesota Law and Court Rules governing document retention.

IV. PROJECT SCOPE EXCLUSIONS

This project does not include the digital conversion of records from any unauthorized County facility or vendor facility other than those identified in section 1.0. Successful completion of this project may lead to other conversion projects not yet identified by the State Court.

V. PROJECT PROPOSAL ELEMENTS

The chosen vendor will provide the following services, working with the State's Civil Division, Probate and Mental Health, Family Court, Psychological Services, Juvenile Justice, Criminal Division, Public Safety Service Division, Research/Business Process Unit, Facilities, and Administrative Support Services including Executive Office

Support, Human Resources, Accounting, Budget and other State approved internal business partners to create processes for digital microfilm and microfiche conversion, document scanning, and indexing:

[The State notes that the selected vendor may be required to use the original paper records in lieu of microfilm, and may perform 30% or more of the conversion work onsite at a State facility. The original paper records range in size from 3"x5" up to and including 20"x30".]

- A. Digitize approximately 18 terabytes of data currently in storage (both on-site and off-site) by the State.
- B. Work with appropriate State units and information technology, and other designated partners to develop specifications for indexing and scanning that will interface with our Court Information Systems and various non-case applications for document search, retrieval and storage. Additional information can be found in Project data conversion (Section 15) of this document.
- C. In handling all records, data, documents and/or film provided in this project, the vendor shall abide by the Rules of Public Access to Records of The Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time, and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality.
- D. Vendor should describe their data redaction process. Vendor must include, as part of their proposal, their methods and capabilities of redacting data from the converted digital image should the State desire this service as part of the negotiated services contract.
- E. **Added Value Service** – Vendors are requested to provide cost information on an optional added value service for secure document destruction services. This service may be provided directly by the vendor or indirectly by a sub-contractor at the direction of the vendor for the disposal/destruction of originally submitted State non-digital media subsequent to the State's acceptance of the digitized data. State procedures could include monthly State staff visits to the vendor's site to audit, record and authorize files for destruction to ensure that the disposal of original State records are in accordance with applicable Minnesota laws and rules governing the disposal of State data.

VI. PROJECT METHOD OF DELIVERY

Vendor will deliver converted images to the State monthly on a mutually agreed media determined by State and the vendor preferably a USB Pushbutton External HDD or SSHD (Solid State Hard Drive) with a minimum 350 Gigabytes of storage capacity. It is envisioned that the external HDD/SSHD will be returned to the vendor on a monthly

basis for continuous reuse following the download and deletion (DOD specifications) of the data by the State.

VII. MEDIA TYPE FOR CONVERSION

- A. 16 mm and 35 mm microfilm;
- B. Microfiche; and
- C. Hard copy originals ranging in size from 3x5 up to 20x30 inches.

VIII. TURNAROUND PERIOD

- A. Vendor will complete the project within a mutually agreed time frame, to be determined as part of the Contract Negotiation Process;
- B. Timeliness Levels
 - 1. Vendor will deliver, at a minimum, 300,000 digital images per month;
 - 2. Vendor will deliver, at a maximum, 600,000 digital images per month.

IX. QUALITY OF SERVICES

- A. Vendor warrants that the quality of work, business practices, and problem resolution will be of industry standards;
- B. Professional quality images: legible and judiciously cropped;
- C. Accurate indexes;
- D. Quality acceptable to State and meeting guidelines set forth by Minnesota Historical Society;
<http://www.mnhs.org/preserve/records/electronicrecords/erintro.html>
- E. Achieve a 99.95% quality assurance acceptability rating for all digitized data without the need for re-work;
- F. Vendor is responsible for re-work of unacceptable images at no additional charge to the State.

X. REPORTING

REPORT NAME	REPORTING FREQUENCY	DELIVERED TO	FURTHER DESCRIPTION OF REPORT
<i>Invoice for monthly services</i>	<i>Monthly</i>	Fourth Judicial District	Invoice will include the number of images processed
<i>Daily throughput</i>	<i>Daily</i>	Project Manager or Designee	SQL query
<i>Exception reports</i>	<i>Daily, Weekly or Monthly</i>	Project Manager or Designee	Images on film but not in Court database index. Entries in the Court database index that are not in file
<i>Issues Log</i>	<i>As needed</i>	Project Manager or Designee	To keep track of any design or conversion issues

XI. LOCATION OF WORK TO BE PERFORMED

Vendor may be required to perform 30% or more of the work onsite at a State location. The remaining 70% or less may be performed at vendor’s location.

XII. PROJECT HARDWARE AND SOFTWARE

Any hardware and software used to convert documents will be supplied by the vendor. In addition, State will not purchase any additional software, such as an image viewer.

XIII. PROJECT BACKUP, RECOVERY, DATA RETENTION REQUIREMENTS

Vendor is required to retain the converted images backup until project is completed or notified by the State to destroy copies. In the event of corruption to a disk drive, the contractor will provide an image from the contractor’s backup.

XIV. PROJECT RESPONSIBILITIES

A. Vendor’s Responsibilities:

1. Vendor should have experience working with State records or at a minimum government data;

2. Vendor will provide a project manager who will work with State project manager to make sure all project deliverables, and objectives are met;
3. Vendor will acknowledge and receive the materials from the State;
4. Vendor will communicate to the State any discrepancies to the packing slip or in the condition of the originals and accompanying metadata instructions before proceeding with imaging;
5. Vendor will assume custody of State records in a secure, dry location and will ensure that their personnel meet stringent background check requirements and sensitive data handling procedures for all State records placed in their temporary care;
6. Vendor will take great care in handling fragile originals;
7. Vendor will build an index that is compatible for each category of State records pursuant to specifications articulated by the State. This includes non-case records and case records with Odyssey/MNCIS compatible case file numbers and Family Court records number;
8. Vendor will insert bar codes between the documents (if applicable);
9. For scanning services performed at state facilities, vendor will provide all staffing, equipment and handle all necessary mobilization issues to perform on-site scanning services at the State's location; Vendor staff are subject to facility security protocols and must comply with all security rules governing their presence on State property, including, but not limited to, appropriate rules of conduct, dress and interactions with Court staff;
10. Vendor will be primarily responsible for quality assurance of digitized records and will assume any and all costs for rework of digitized copies not fully meeting quality standards as stated in this RFP;
11. Vendor will deliver the converted images as described in Section VI above;
12. If applicable, the vendor shall be responsible for packing, transporting and insuring of the materials to be returned to the State-designated storage site. The vendor shall assume all liabilities for loss from the vendor's site to storage site while the materials are in transit, and until State acknowledges the receipt of all materials thus shipped. To be considered responsive, the vendor must submit proof of insurance with the proposal;
13. Vendor will deliver exception reports;

14. Images on film, but not in the State database index;
15. Entries in the State database index that are not on file;
16. Selected vendor must be able to work/interface with other State internal/external business partners as required by the State.

B. State's Responsibilities:

1. State will be responsible for packing, transporting and inventorying the non-digital data from State authorized storage facilities to the vendor's site or State facilities location, if applicable, where the digitization work will be performed. State will assume all liabilities for loss from the storage to the vendor's site while the materials are in transit, and until the vendor acknowledges the receipt of all materials thus shipped, as provided in Section XIV.A above;
2. Loading the returned images into the State's system in a timely manner;
3. Returning the disk drives if applicable to the contractor for re-use after the data are in State files;
4. State will monitor quality control/assurance practices from time-to-time and conduct random testing of non-digitized to digitized data. Random testing may occur at the State's location or at the Vendor's location with 24 hours notice;
5. State will inform the vendor of any quality related issues in a reasonable time frame;
6. Provide a list of naming conventions, and technical specifications for index files; and
7. Court will provide, at no cost to vendor, a logistically appropriate location for on-site digitizing services.

XV. LAND AND VITAL RECORDS REQUIREMENTS

A. Image Quality and Indexing Requirements

1. Scan density shall be no less than 300 dpi.
2. Converted images will be de-speckled, de-skewed, black border removed, legible, and judiciously cropped.

3. Vendor will provide one index record/file for each document. Index values will differ between applications. Final format will be determined mutually between vendor and State.
 4. Before a vendor is selected, they may be given a sample microfilm or paper record and be asked to convert the sample. Those images must be acceptable to State.
- B. Image Format Requirements:
1. The converted images must use text searchable .pdf file formats.
 2. Vendor will separate any bad images from the good images. If a document contains one page that fails to meet quality standards, then the entire document should be determined as unacceptable and reworked.
- C. Organization Requirements:
1. State requires images in folders. State will provide the naming conventions for files and folders.
 2. State may have entire case files or documents or pages within a case file that are “sealed” or classified as “private” or “confidential”. These documents must be electronically marked as “sealed” or “private” or “confidential” as specified by the State unit.
 3. Each case file number will contain all the images that are “tied” to the unique case number and the INDEX file for all images on that folder.

XVI. SUBMISSION REQUIREMENTS.

A. GENERAL REQUIREMENTS.

1. Certificate of Insurance. Each proposal shall contain acceptable evidence of compliance with the workers' compensation coverage requirements of § 176.181, subd. 2. Vendor's RFP response must include one of the following: (1) a certificate of insurance, or (2) a written order from the Commissioner of Insurance exempting you from insuring your liability for compensation and permitting him to self-insure the liability, or (3) an affidavit certifying that you do not have employees and therefore are exempt pursuant to Minn. Stat. §§ 176.011, subd. 10; 176.031; and 176.041.
2. Affirmative Action Certification. If the vendor's proposal exceeds \$100,000.00, the RFP response must include a completed Affirmative Action Statement and Certificate of compliance, which are attached as Appendix I.

3. Non-collusion Affirmation. Vendor must complete the Affidavit of Non-collusion (Appendix II) and include it with its RFP response.
4. Contract Terms. The State's proposed contract templates are set forth in Appendix III (contract) and Appendix IV (subcontractor participation agreement) and APPENDIX VI (confidentiality and conflict of Interest agreement). No work can be started until a contract (and where necessary a subcontractor participation agreement), in the forms approved the the State Court Administrator's Legal Counsel Division, has been signed by all necessary parties in accordance with state court procurement and contract policies. The templates included in the appendices are sample forms and are not to be interpreted as offers.
5. Financial Stability; Trade Secret. Vendor's RFP must provide evidence of Vendor's financial stability as an indicator of Vendor's ability to provide services irrespective of uneven cash flow. Judicial Branch rules of public access permit vendors to submit evidence of financial stability as trade secret information according to the following:
 - a. the evidence-of-vendor's-financial-stability must qualify as a trade secret under Minn. Stat. section 325C.01 or as defined in the common law;
 - b. the vendor submits the evidence-of-vendor's-financial-stability on a separate document (but as part of their complete submission) and marks the document(s) containing only the evidence-of-vendor's-financial-stability as "confidential;";
 - c. the evidence-of-vendor's-financial-stability is not publicly available, already in the possession of the judicial branch, or known to or ascertainable by the judicial branch from third parties.

Except for financial stability information submitted in accordance with this section, do not place any information in your proposal that you do not want revealed to the public. Proposals, once opened, become accessible to the public except for financial stability information submitted in accordance with this section. Please also note that if a vendor's proposal leads to a contract, the following information will also be accessible to the public: the existence of any resulting contract, the parties to the contract, and the material terms of the contract, including price, projected term and scope of work.

B. PROJECT RELATED SUBMISSION REQUIREMENTS.

1. Responses must include:

- a. Overview that reflects the vendors' understanding of the efforts described in this RFP.
- b. Detailed explanation of how the Vendor proposes to meet the Project objectives and requirements set forth above.
- c. Resume(s) of Proposer's Team;
- d. Total, not-to-exceed cost, including all travel and related expenses, for Vendor's proposal;
- e. References: Provide three client references with appropriate contact information that the proposer has performed work for in the last 3 years; and
- f. A statement identifying any conflicts of interest as it relates to this project.

XVII. PROPOSAL EVALUATION.

- A. The State will evaluate all complete proposals received by the deadline. Incomplete proposals, late proposals, or proposals sent to any other address will not be considered. In some instances, an interview or presentation may be part of the evaluation process.
- B. The evaluation of all proposals shall be based upon deriving the "Best Value" for the Judicial Branch. Best Value means achieving an appropriate balance between price and other factors that are key to a particular procurement. A procurement that obtains a low price but does not include other necessary qualities and features of the desired product or service does not meet the Best Value criterion. Factors upon which the proposals will be judged include, but are not limited to, the following:
 - Proposer's industry expertise and experience in performing similar work.
 - Financial stability of the organization.
 - Thoroughness, quality, specificity, robustness, flexibility of Vendor's approach/ methodology.
 - Proposer's controlling security measures and chain-of-custody procedures for Court records transferred into their custody for the purpose of performing digital imaging services.
 - Proposer's on-site scanning capabilities.
 - Proposer's time line production capabilities.
 - Proposer's past performance and client references.
 - Proposer's current or past relationship with the Court.

- Proposer’s telephone or in-person interview, if requested.
- Quality Assurance of scanned documents.
- Cost estimate for off-site (at vendor location) scanning services.
- Cost estimate for on-site scanning services.
- Cost (optional) of secure file destruction services upon completion of digitization services at the proposer’s site location.

Criteria Compliance - The Court reserves the right to determine, in its sole and absolute discretion, whether any aspect of a Proposal satisfactorily meets the criteria established in this RFP.

Submission of Alternatives - Although this RFP specifies minimum requirements for completion of the Project and should be responded to in all respects, Proposers are invited and encouraged to submit alternatives that may be of interest to the Court.

Mandatory On-Site Vendor Visit – The Court will require that any Proposer interested in submitting a proposal must attend a mandatory site visit of the Court’s record vaults at various locations in the Fourth Judicial District, Hennepin County Court. Proposers are required to travel at their own expense and attend a guided tour of the Court’s facilities. Proposer’s failure or refusal to attend this mandatory on-site visit will result in vendor disqualification in the RFP submittal process.

Additional Information Requests - The Court reserves the right to request additional information from Proposers during any phase of the proposal evaluation process. During the evaluation and selection process, the Court may require the presence of Proposer's representatives to make presentations and answer specific questions. Notification of any such requirements will be given as necessary.

Conditions of Award - The Court may elect not to award a contract solely on the basis of this RFP, and will not pay for the information solicited or obtained. The information obtained will be used in determining the alternative that best meets the needs of the Court.

C. **CONTENT OF PROPOSAL**

Proposals must include the following information, preferably in the following order:

1. **Business Organization** – The proposal shall include relevant historical data and identification of the Proposer and the branch office or subordinate element which will perform the work contemplated herein.

The owners and principal management personnel of the firm shall be identified fully.

2. **Concept and Solution** – A statement on the Proposer’s understanding of the tasks presented with proposed methodology and solutions outlined.
3. **Proposer Qualifications** – Information which highlights Proposer’s particular expertise and experience to provide the required services, and how the Proposer will structure, develop and manage the project.
4. **Personnel** – The names and titles of the professional staff proposed for assignment to the Court account shall be identified in full, with a description of the team leadership and reporting relationships. Include résumés for the personnel who will be actively engaged in work related to the account and identify their qualifications to provide the required services. It is expected that the vendor team identified in the proposal will be the same individuals who will actually work on the project.
5. **References** – Provide a minimum of three (3) client references of comparable “related” projects within the last 36 months, preferably with the public sector. Provide, for each Proposer reference, the scope of service, time performed, and the name, title, business address and telephone number of the principal contact person.

XVIII. PROPOSAL SUBMISSION TIMELINE; QUESTIONS; FORM; DEADLINE.

A. PROPOSAL TIMELINE

1. Announcement of RFP Date: September 10, 2010
2. State Register Posting Date: September 13, 2010 and September 20, 2010
3. **Mandatory site visit:** September 17, 2010 local (i.e., Minneapolis) time
4. Questions Due: September 22, 2010, 4PM local (i.e., Minneapolis) time
5. Answers Posted: September 24, 2010, 5PM local (i.e., Minneapolis) time
6. Proposal Submission Deadline: September 29, 2010, 4PM local (i.e., Minneapolis) time, with possible interviews and subsequent selection as soon thereafter as possible.

- B. QUESTIONS must be submitted in writing via email preferred no later than September 22, 2010, 4PM local (i.e., Minneapolis) time to the point of contact (POC) identified below:

Primary POC:

John F. Erar
Chief Information Officer
4th Judicial District
C-1250 Government Center
300 South Sixth Street
Minneapolis, MN 55487-0421
E-mail: John.Erar@courts.state.mn.us

Copy to:

Pam Kilpela
Administrative Supervisor
Fourth Judicial District, Hennepin Court
C-1200 Government Center
300 South Sixth Street
Minneapolis, MN 55487-0225
E-Mail: pamela.kilpela@courts.state.mn.us

Except for the mandatory site visit, other court personnel are not allowed to discuss the Request for Proposal with anyone, including responders, before the proposal submission deadline. Questions and answers will be posted by end of day, September 24, 2010, and will be accessible to other vendors and the public.

- C. SEALED PROPOSAL; NUMBER OF COPIES; SUBMITTAL ADDRESS. Your proposal must be in writing and include (10) paper copies and one (1) electronic PDF copy, and must be submitted in a sealed envelope to:

John F. Erar
Chief Information Officer
4th Judicial District
C-1250 Government Center
300 South Sixth Street
Minneapolis, MN 55487-0421

Attn: Digital Records RFP Response

- D. SIGNATURES. Your proposal must be signed by, in the case of an individual, by that individual, and in the case of an individual employed by a firm, by the individual and an individual authorized to bind the firm.
- E. INK AND PRICE SHEET. Prices and notations must be typed or printed in ink substantially in the form set forth in Appendix VI of this RFP. No erasures are

permitted. Mistakes may be crossed out and corrections must be initialed in ink by the person signing the proposal.

- F. **DEADLINE.** Proposals must be received no later than **4:00 p.m.** local (i.e., Minneapolis) time on **September 29, 2010**. Proposals will be opened the following business day and once opened become accessible to the public. Except for evidence of Vendor's financial stability submitted in accordance with section XVI.A.6. of this RFP, do not place any information in your proposal that you do not want revealed to the public. All documentation shipped with the proposal, including the proposal, will become the property of the State.

- G. **LATE PROPOSALS.** Late proposals will not be accepted.

APPENDIX I

**Affirmative Action Statement
and
Certification of Compliance
(Must be submitted with Response)**

STATE OF MINNESOTA - AFFIRMATIVE ACTION STATEMENT

If your response to the RFP is estimated to exceed \$100,000, you must complete the information requested:

BOX A:

1. Have you employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months?

YES NO

If your answer is “NO,” proceed to BOX B. If your answer is “YES,” **your response will be rejected unless your firm or business has a Certificate of Compliance issued by the State of Minnesota, Commissioner of Human Rights, or has submitted an affirmative action plan** to the Commissioner of Human Rights for approval **by the time the responses are due** for any proposal estimated to exceed \$100,000.

2. Please check one of the following statements:

YES, we have a **current** Certificate of Compliance that has been issued by the State of Minnesota, Commissioner of Human Rights. (Include a copy of your certificate with your response.)

NO, we **do not have** a Certificate of Compliance; however, **we submitted an affirmative Action plan** to the Commissioner of Human Rights for approval on _____. The plan must be approved by the Commissioner of Human Rights before any designation or agreement can be executed.

NO, we **have not submitted** a plan. If your plan is not submitted by the time the responses are due, your response will be rejected.

NOTE: Minnesota designations must have a certificate issued by the Minnesota Department of Human Rights. Affirmative Action plans approved by the federal government, a county, or a municipality must still be reviewed and approved by the Minnesota Department of Human Rights for a certificate to be issued.

BOX B:

1. Have you employed more than 40 full-time employees on a single working day during the previous 12 months in a state in which you have your primary place of business and that primary place of business is outside of the State of Minnesota, but inside the United States?

YES NO

If your answer is “NO,” proceed to BOX C. If your answer is “YES,” **the state cannot execute a designation with your firm or business unless it is in compliance with the Minnesota Human Rights certification requirements. It is the sole responsibility of the firm or business to apply for and obtain a human rights certification prior to execution of a designation as applicable.** You may

achieve compliance with the Human Rights Act by having either a current Certificate of Compliance issued by the State of Minnesota, Commissioner of Human Rights, or by certifying that you are in compliance with federal Affirmative Action requirements.

2. Please check one of the following statements:

YES, we have a current Certificate of Compliance issued by the Minnesota Department of Human Rights. (Include a copy of your certificate with your response.)

YES, we are in compliance with federal Affirmative Action requirements.

NO, we do not have a current Certificate of Compliance and we cannot certify that we are in compliance with federal Affirmative Action requirements.

BOX C:

1. If your answers to BOX A (Question 1) and Box B (Question 1) were “NO,” you are not subject to the Minnesota Human Rights Act certification requirement. Please, however, check one of the following:

NO, we have not employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months and we have not employed more than 40 full-time employees on a single working day during the previous 12 months in the state in which our primary place of business is located.

We are a business with our primary place of business outside of the United States that has not employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months.

For further information regarding Minnesota Human Rights requirements, contact the Department of Human Rights, Compliance Services, 190 East 5th Street, Suite 700, St. Paul, MN 55101; Voice: 651.296.5663; Toll Free: 800.657.3704; or TTY: 651.296.1283. For further information regarding federal Affirmative Action requirements, call 800.669.4000 or visit its web site at <http://www.eeoc.gov/>.

By signing this statement, the Proposer certifies that the information provided is accurate.

NAME OF FIRM: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

STATE OF MINNESOTA - AFFIRMATIVE ACTION CERTIFICATION OF COMPLIANCE

The Minnesota Human Rights Act (Minn. Stat. § 363.073) divides the designation compliance program into two categories. Both categories apply to any designations for goods or services in excess of \$100,000.

The first category applies to businesses that have had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months. The businesses in this category must have submitted an Affirmative Action plan to the Commissioner of the Department of Human Rights prior to the due date of the response and must have received a Certificate of Compliance prior to the execution of a designation.

The second category applies to businesses that have had more than 40 full-time employees on a single working day in the previous 12 months in the state in which they have their primary place of business. The businesses in this category must have either a current Certificate of Compliance previously issued by the Department of Human Rights or certify to the STATE that they are in compliance with federal Affirmative Action requirements before execution of a designation. For further information, contact the Department of Human Rights, 190 East 5th Street, Suite 700, St. Paul, MN 55101; Voice: 651-296-5663; Toll Free: 800-657-3704; or TTY: 651-296-1283.

Minnesota businesses must have a current Certificate of Compliance or submitted an affirmative action plan by the time proposals are due, or their proposal will be rejected.

The STATE is under no obligation to delay the execution of a designation until a business has completed the Human Rights certification process. It is the sole responsibility of the business to apply for and obtain a Human Rights certificate prior to execution of a designation, as applicable.

APPENDIX II

**STATE OF MINNESOTA
AFFIDAVIT OF NONCOLLUSION
(Must be submitted with Response)**

I swear (or affirm) under the penalty of perjury:

1. That I am the Proposer (if the Proposer is an individual), a partner in the company (if the Proposer is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Proposer is a corporation);
2. That the attached proposal submitted in response to the **Court Records Digitization Project – Request for Proposals** has been arrived at by the Proposer independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Proposer of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or agent (including a partner) of the Proposer and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Proposer's Firm Name: _____

Authorized Signature: _____

Date: _____

APPENDIX III

STATE OF MINNESOTA

DIGITAL RECORD CONTRACT

(SAMPLE COPY)

THIS CONTRACT, and amendments and supplements thereto, is between State of Minnesota, acting through its State Court Administrator's Office, Information Technology Division, address 145 Minnesota Judicial Center, 25 Rev. Martin Luther King Jr., Blvd. ,St. Paul, MN 55155 (hereinafter "STATE") and _____ [insert vendor full legal name and address] _____ (hereinafter "CONTRACTOR").

Recitals

The STATE, pursuant to Minnesota Statutes 2000, Section 480.15, subdivisions 5 and 10b, desires to maintain the computer programs designed to compile the statistical and management data but does not have sufficient resources to complete _____ [insert general description of services] _____ within desired timeframes. CONTRACTOR (and, where applicable, CONTRACTOR's STATE approved subcontractor) have experience with the desired services and CONTRACTOR represents that it is duly qualified and willing to perform the services set forth herein.

Contract

Based on the mutual agreements, promises, and covenants contained in this contract, it is agreed:

I. **DUTIES.** CONTRACTOR, who is not a STATE employee, shall provide professional document imaging services as described in Sections II through XV of the Request for Proposals dated XXXXXXXX, which sections are incorporated by this reference as if fully set forth herein. Services will be completed according to the following schedule: _____.

II. **CONSIDERATION AND TERMS OF PAYMENT.**

A. **Consideration.** As consideration for all services performed, transfer of rights, and goods or materials supplied by CONTRACTOR pursuant to this Contract, including all clerical support, phone support, and related expenses, the STATE shall

pay to CONTRACTOR one [___insert agreed upon hourly rate here___]dollars (US \$XXX.XX) per hour. The total obligation of the STATE for all compensation and reimbursements to CONTRACTOR shall not exceed [___insert total cap amount here ___] dollars (US \$XXX.XX).

It is understood that no funds are being encumbered under this contract for travel and related expenses, and parking and copying. To the extent that travel or copying is necessary, the STATE will reimburse CONTRACTOR through its regular non-state employee expense reimbursement process, or arrange to pay directly, for pre-approved airfare, lodging, meals, and ground transportation (“travel and subsistence expenses”) or pre-approved copying expenses; provided, that CONTRACTOR shall be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the STATE’S current Administrative Policy on Travel and Reimbursement. CONTRACTOR shall not be reimbursed for travel and subsistence expenses or copying expenses unless it has received prior written approval for such expenses from the STATE, and the STATE will separately encumber the necessary funds. The STATE hereby designates Kay Pedretti (or her successor in office) as its agent for approval of such expenses.

B. **Terms of Payment.** CONTRACTOR shall submit an invoice on the first and fifteenth day of each month for billable costs incurred by the CONTRACTOR during the immediately preceding one-half month. Payments shall be made by the STATE promptly after CONTRACTOR'S presentation of invoices for services performed and acceptance of such services by the STATE'S authorized agent pursuant to Section VII.

III. **TIME REQUIREMENTS.** CONTRACTOR shall comply with all of the time requirements described in this contract.

IV. **CONDITIONS OF PAYMENT.** All services provided by CONTRACTOR pursuant to this contract shall be performed to the satisfaction of the STATE, as determined at the sole discretion of its authorized representative, and in accord with the CONTRACTOR'S duties set forth in section I of this contract and all applicable federal, state, and local laws, ordinances, rules and regulations. CONTRACTOR shall not receive payment for work found by the STATE to be unsatisfactory, or performed in violation of federal, state or

local law, ordinance, rule or regulation.

V. **TERMS OF CONTRACT.** This contract shall not be effective until approved as to form and execution by the STATE's Legal Counsel Division, and upon such approval the effective date shall be deemed to be [___insert start date here___]. This contract shall remain in effect until [___insert termination date here___], unless terminated or cancelled as provided herein.

VI. **CANCELLATION.**

A. The STATE may cancel this contract at any time, with or without cause, upon thirty (30) days' written notice to the other party. If the contract is canceled under this clause, CONTRACTOR shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.

B. The STATE may immediately cancel this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Cancellation must be by written or facsimile transmission notice to CONTRACTOR. The STATE is not obligated to pay for any services that are provided after notice and effective date of termination. However, CONTRACTOR will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The STATE will not be assessed any penalty if the contract is cancelled because of a decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The STATE must provide CONTRACTOR notice of the lack of funding within a reasonable time of the STATE'S receiving that notice.

VII. **STAFING**

A. **STATE'S Authorized Representative.** The STATE'S Authorized Representative for the purposes of administration of this contract is Kay Pedretti, Director, State Court Administrator's Office, Court Services Division, or her successor in office. Such representative shall have final authority for acceptance of CONTRACTOR'S services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Section II (B).

B. Project Managers. Each party shall designate a project manager who will be responsible for completion of their respective parties tasks hereunder. Replacement project managers may be designated by notice.

C. CONTRACTOR Conflict of Interest Screening. Prior to assigning any individual to perform services hereunder, the CONTRACTOR shall take reasonable steps to determine whether the individual (or his or her immediate family members) has an interest in any pending or threatened litigation or proceeding in any Minnesota state court. Such steps shall include, without limitation, requiring all individuals assigned to perform services hereunder to complete Part II of the Confidentiality and Disclosure of Interest Agreement attached as Appendix V, which is attached to and made a part of this Agreement. The CONTRACTOR acknowledges that the STATE may immediately disqualify any such individual from performing services hereunder, and the CONTRACTOR shall ensure that no such disqualified individual shall have any further access to the confidential information of the STATE. If the CONTRACTOR becomes aware of any individual's interest (or that of his or her immediate family members) in any threatened or pending litigation or proceeding in any Minnesota state court, the CONTRACTOR shall immediately notify the STATE of such interest. The CONTRACTOR shall bear the cost of orienting all personnel replacements of the CONTRACTOR.

VIII. ASSIGNMENT AND BINDING EFFECT. Except as expressly authorized in this contract, CONTRACTOR shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of the STATE. This contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any corporation or other legal entity into, by or with which CONTRACTOR may be merged, acquired or consolidated or which may purchase all or substantially all of the business assets of CONTRACTOR.

IX. AMENDMENTS. Any amendments to this contract shall be in writing and shall be executed by the same parties who executed the original contract, or their successors in office.

X. **LIABILITY.** CONTRACTOR shall indemnify, save, and hold the STATE, its representatives and employees harmless from any and all claims or causes of action, including all attorney's fees incurred by the STATE, arising from the performance of this contract by CONTRACTOR or CONTRACTOR'S agents or employees. This clause shall not be construed to bar any legal remedies CONTRACTOR may have for the STATE'S failure to fulfill its obligations pursuant to this contract.

XI. **STATE AUDITS.** The books, records, documents, and accounting procedures and practices of the CONTRACTOR relevant to this contract shall be subject to examination by the contracting department and the Legislative Auditor for a minimum period of six years from the termination of this contract. Records shall be sufficient to reflect all costs incurred in performance of this Contract.

XII. **CONFIDENTIALITY, DISCLOSURE AND USE.**

A. **General.** CONTRACTOR shall not disclose to any third party (except, where applicable, CONTRACTOR's STATE approved subcontractor [___insert full legal name of subcontractor___, which must first sign a confidentiality, participation and assignment of rights agreement in a form acceptable to the STATE) any information that is both: (1) made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform hereunder or is created, gathered, generated or acquired in accordance with this contract; and (2) inaccessible to the public pursuant to the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time. If the CONTRACTOR receives a request to release the information referred to in this Clause, the CONTRACTOR must immediately notify the STATE. The STATE will give the CONTRACTOR instructions concerning the release of the information to the requesting party before the information is released. CONTRACTOR shall ensure that all individuals assigned to perform services hereunder shall abide by the terms of this XII. Prior to assigning any individual to perform services under this contract, CONTRACTOR shall require such individual to complete Part I of the Confidentiality and Disclosure of Interest form attached hereto as Appendix V, which is made a part of this contract by this reference.

B. **State Programs, Databases, Marks.** Without limiting paragraph A, above,

CONTRACTOR agrees to the following:

1. **State Programs.** The computer application programs made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder are referred to herein as "State Programs." The STATE is the copyright owner of the State Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the State Programs, and all analysis and design specifications, programming specifications, source code, algorithms, and information contained in technical reference manuals pertaining to the State Programs, are trade secret information of the STATE. The computer operating systems software programs and other third party software licensed by the STATE, and related documentation, made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder, are subject to claims of trade secret and copyright ownership by the respective licensors and will be treated by CONTRACTOR in the same manner as trade secret information of the STATE. In addition, CONTRACTOR will familiarize itself with and abide by the terms and conditions of the license agreements applicable to such third party software. Without limiting the foregoing, CONTRACTOR may also be required to sign an appropriate confidentiality agreement with the STATE's software vendor if access to proprietary segments of the MNCIS application are necessary for CONTRACTOR's work hereunder.

2. **State Databases.** The computer databases made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder are referred to herein as "State Databases." The STATE is the copyright owner of the State Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the State Databases and to their structure, sequence and organization are trade secret information of the STATE. All information contained within the State Databases is sensitive, confidential information and will be treated by CONTRACTOR in the same manner as trade secret information of the STATE.

3. **Marks.** The STATE claims that the marks "Total Court Information

System," "TCIS," "MNCIS," "CrimNet," "SJIS," and "MARS" are trademarks and service marks of the STATE. The marks "Total Court Information System," and "TCIS" are registered trademarks of the STATE. CONTRACTOR shall neither have nor claim any right, title, or interest in or use of any trademark, service mark, or tradename owned or used by the STATE.

4. **Restrictions on Duplication, Disclosure and Use.** CONTRACTOR will not, except as required in the performance of its obligations hereunder, copy any part of the State Programs or State Databases, prepare any translations thereof or derivative works based thereon, use or disclose any trade secret information of the STATE, or use any trademark, service mark, or tradename of the STATE, in any way or for any purpose not specifically and expressly authorized by this contract. As used herein, "trade secret information of the STATE" means any information or compilation of information possessed by the STATE, or developed by CONTRACTOR in the performance of its obligations hereunder, which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of the STATE" does not, however, include information which was known to CONTRACTOR prior to CONTRACTOR'S receipt thereof, either directly or indirectly, from the STATE, information which is independently developed by CONTRACTOR without reference to or use of information received from the STATE, or information which would not qualify as trade secret information under Minnesota law. It will not be a violation of this section for CONTRACTOR to disclose any information received from the STATE pursuant to the order of a court or governmental authority of competent jurisdiction if CONTRACTOR notifies the state immediately upon receipt by CONTRACTOR of notice of the issuance of such an order.
5. **Proprietary Notices.** CONTRACTOR will advise its employees and permitted subcontractors who are permitted access to any of the State Programs, State Databases, or trade secret information of the STATE of the restrictions upon duplication, disclosure and use contained in this contract. Without limiting the foregoing, CONTRACTOR shall include in and/or on

any copy or translation of, or derivative work based upon, any of the State Programs, the State Databases, or trade secret information of the STATE, or any part thereof, and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to CONTRACTOR by the STATE, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

- C. **Inspection and Return of State Property.** All documents, encoded media, and other tangible items made available to CONTRACTOR by the STATE, or prepared, generated or created by CONTRACTOR in the performance of its obligations hereunder, are and will be exclusively the property of the STATE and will be available for inspection by the STATE upon request. Upon completion of CONTRACTOR'S performance of services hereunder, CONTRACTOR will, upon the STATE'S request, promptly deliver to the STATE any or all such documents, encoded media and other items in its possession, including all complete or partial copies, recordings, abstracts, notes or reproductions of any kind made from or about such documents, media, items, or information contained therein. CONTRACTOR and the STATE acknowledge that all computer operating systems software programs and other third party software licensed by the STATE, and related documentation, made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder, or any translations, compilations, or partial copies thereof are and remain the property of the respective licensors.
- D. **Injunctive Relief.** CONTRACTOR acknowledges that the STATE will be irreparably harmed if CONTRACTOR'S obligations under sections XII and XIII of this contract are not specifically enforced and that the STATE would not have an adequate remedy at law in the event of an actual or threatened violation by CONTRACTOR of its obligations. Therefore, CONTRACTOR agrees that the STATE shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violation or breach by CONTRACTOR without the necessity of the STATE showing actual damages or that monetary damages would not afford an adequate remedy. CONTRACTOR shall be liable to the State for reasonable attorney's fees incurred by the STATE in obtaining any relief pursuant to this section.

- E. **Nondisclosure Indemnity.** Without limiting section X, CONTRACTOR agrees to indemnify, defend and save harmless the STATE and its agents, officers and employees from and against any and all claims by Third Parties that are determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted directly and proximately from CONTRACTOR'S violation of the non-disclosure provisions hereof. The STATE shall provide CONTRACTOR with prompt notice of any claim for which indemnification may be sought hereunder and shall cooperate in all reasonable respects with CONTRACTOR in connection with any such claim. CONTRACTOR shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing.

XIII. RIGHTS IN AND TO INFORMATION, INVENTIONS, AND MATERIALS. In consideration of the facts that CONTRACTOR'S performance under this contract will involve access to and development of information which shall be trade secret information of the STATE and may involve the development by CONTRACTOR or CONTRACTOR'S participation in the development of copyrightable and/or patentable subject matter which the parties intend be owned by the STATE:

- A. All right, title, and interest in and to any trade secret information of the STATE (as defined in sections XII. B.1, 2, and 4, above) developed by CONTRACTOR either individually or jointly with others, and which arises out of the performance of this contract, will be the property of the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE free and clear of any liens, claims, or other encumbrances.

- A. All copyrightable material which CONTRACTOR shall conceive or originate, either individually or jointly with others, and which arises out of the performance of this contract, shall conclusively be deemed "works made for hire" within the meaning and purview of section 101 of the United States Copyright Act, 17 U.S.C. § 101, to the fullest extent possible, and the STATE shall be the copyright owner thereof and of all elements and components thereof in which copyright protection can subsist. To the extent that any of the foregoing does not qualify as a "work made for hire," CONTRACTOR hereby transfers, assigns and conveys the exclusive copyright ownership thereof to the STATE, free and clear of any liens, claims or other encumbrances.

- B. All right, title, and interest in and to any invention which CONTRACTOR first conceives or first reduces to practice either individually or jointly, and which arises out of the performance of this contract, will be the property of the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE along with ownership of any and all patents on the inventions anywhere in the world, free and clear of any liens, claims or other encumbrances. CONTRACTOR agrees to disclose promptly any such invention to the STATE. This paragraph shall not apply to any invention for which no equipment, supplies, facility or trade secret information of the STATE (as defined in Sections XII. B.1, 2, and 4, above) was used and which was developed entirely on CONTRACTOR own time, and a) which does not relate i) directly to the business of the STATE or ii) to the STATE'S actual or demonstrably anticipated research or development, or b) which does not result from any work performed or materials provided by CONTRACTOR for the STATE.
- C. CONTRACTOR will execute all documents and perform all other acts that the STATE may reasonably request in order to assist the STATE in perfecting its rights in and to the trade secret information of the STATE and the copyrightable and patentable subject matter identified herein, in any and all countries.

XIV. **AFFIRMATIVE ACTION.**

- A. **Covered Contracts and Contractors.** If this contract exceeds \$100,000 and CONTRACTOR employed more than 40 full-time employees on a single working day during the previous twelve months in Minnesota or in the state where it has its principle place of business, then CONTRACTOR must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state that does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.
- B. **Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (“Commissioner”) as indicated by a certificate of compliance. The

law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

C. Minn. R. Parts 5000.3400-5000.3600 provide:

1. Minn. R. Parts 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. Parts 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

2. **Disabled Workers.** The contractor must comply with the following affirmative action requirements for disabled workers:

a. The contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

b. The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

- c. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- d. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
- e. The contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

D. **Consequences.** The consequences for a contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the STATE.

E. **Certification.** CONTRACTOR hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600 and is aware of the consequences for non-compliance.

XV. **WORKERS' COMPENSATION.** In accordance with the provisions of Minnesota Statutes, Section 176.182, as enacted, the CONTRACTOR shall provide acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, subdivision 2, as enacted, prior to commencement of any duties to be performed under this contract.

XVI. **ANTITRUST.** CONTRACTOR hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

XVII. **OTHER PROVISIONS.**

A. **Warranties.**

1. **Original Works.** In performing its obligations hereunder, CONTRACTOR will not use or incorporate any trade secret information or copyrighted works of authorship of CONTRACTOR or of any third party, and except for components already in the public domain (without any license restrictions attached thereto), all software, documentation, information and other materials provided or furnished by CONTRACTOR in performing the duties under this contract will be original and will not violate or infringe upon the rights of any third party.

2. **Professional Services; Status; Conflicts of Interest.** CONTRACTOR represents and warrants to the STATE that all professional services required hereunder will be provided exclusively by CONTRACTOR's [employee ___insert employee name___]/[CONTRACTOR's STATE approved subcontractor ___insert subcontractor's full legal name___ (which must first sign a confidentiality, participation and assignment of rights agreement in a form acceptable to the STATE)] and that : (a) the [employee]/[subcontractor] has the proper training, skill and background so as to be able to perform all professional services required in this contract in a competent and professional manner, and all such work shall be of quality; and (b) the [employees]/[subcontractor's employees] assigned to work on the Project have obtained lawful permanent residence in the United States of America with a right to live and work permanently in the United States of America.

3. **Mutual Representations and Warranties.** CONTRACTOR and the STATE each represent and warrant to the other that: a) it has the full right,

power and authority to enter into this contract and to perform fully all of its obligations hereunder; b) it is free of any obligation or restriction that would prevent it from entering into this contract or from performing fully any of its obligations hereunder; and c) it has not entered into and will not enter into any contract which would impede the full performance of its obligations hereunder or would in any way limit or restrict the rights of the other under this contract.

- B. **Patent and Copyright Indemnity.** Without limiting section X, CONTRACTOR shall indemnify the STATE and hold it harmless against any claim that the work performed or material provided hereunder infringes or violates the patent, copyright, or trade secret rights of any third party. CONTRACTOR shall pay any and all resulting costs, expenses (including attorney's fees), damages and/or liabilities associated with or resulting from any such claim.

- C. **Relationship of the Parties.** CONTRACTOR is an independent contractor and shall not be deemed for any purpose to be an employee of the STATE. CONTRACTOR understands and agrees that the STATE is not withholding any taxes from the fees paid to CONTRACTOR pursuant to this contract and that CONTRACTOR is solely responsible for any taxes and other amounts to be paid as a result of the fees paid to CONTRACTOR pursuant to this contract. Neither CONTRACTOR nor the STATE shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.

- D. **Consent to Release of Certain Data.** Under Minn. Stat. § 270C.65 and other applicable law, CONTRACTOR consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the STATE, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring CONTRACTOR to file state tax returns and pay delinquent state tax liabilities, if any.

- E. **Publicity.** Any publicity regarding the subject matter of this contract must identify the STATE as the sponsoring agency and must not be released without

the prior written approval from the STATE'S Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for CONTRACTOR individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract. Notwithstanding anything in this contract to the contrary, either party may disclose to the public the existence of this contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

F. **Endorsement.** CONTRACTOR must not claim that the STATE endorses its products or services.

G. **Non-Exclusivity.** This contract shall not preclude CONTRACTOR from developing materials outside this contract that are competitive, irrespective of their similarity to materials delivered to the STATE under this contract; provided, however, that such materials prepared by CONTRACTOR shall not violate the nondisclosure and intellectual property provisions of this contract. Nothing in this contract shall be construed as precluding or limiting in any way the right of CONTRACTOR to provide computer consulting and programming services or other services of any kind to any person or entity as CONTRACTOR in its sole discretion deems appropriate.

H. **Notices.** Any written notice hereunder shall be deemed to have been received when: (A) personally delivered; (B) sent by confirmed facsimile transmission or telegram; (C) sent by commercial overnight courier with written verification of receipt; or (D) seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at: (1) if to CONTRACTOR, at the CONTRACTOR'S address set forth in the opening paragraph of the contract; (2) if to the STATE, at the STATE'S address set forth in the opening paragraph of the contract, with a copy to Legal Counsel Division, 140 Minnesota Judicial Center, 25 Rev. Martin Luther King Jr., Blvd. St. Paul, MN 55155; or (3) at such other address of which written notice has been given in accordance herewith.

I. **Facilities and Use Conditions.** Without limiting CONTRACTOR's

responsibilities under any other section of this contract, to the extent that CONTRACTOR utilizes STATE provided on-site facilities (including, but not limited to, computers, desks, Internet connections, etc.) to perform CONTRACTOR's duties under this contract, CONTRACTOR must comply with all policies of the STATE and the Minnesota judicial branch as they relate to the acceptable use or operation of STATE facilities, including, without limitation, the Minnesota State Court System Policies on the Use of the Internet and Other Electronic Communication Tools and Drug Free Workplace as the same may be amended and replaced from time to time.

J. Miscellaneous.

1. The provisions of sections VII, X, XI, XII, XIII, XVI, and XVII shall survive any cancellation or termination of this contract, as shall any other provisions which by their nature would be intended or expected to survive such cancellation or termination.
2. Captions are for convenient reference and do not constitute a part of this contract.
3. The failure by either Party at any time to enforce any of the provisions of this contract or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this contract. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.
4. This contract shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States of America and of the State of Minnesota, without regard to Minnesota's choice of law provisions. Any action arising out of or relating to this contract, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. CONTRACTOR hereby irrevocably consents and submits itself to the personal jurisdiction

of said courts for that purpose.

5. Every provision of this contract shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this contract so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this contract, and all other provisions shall remain in full force and effect.

6. This contract sets forth the entire agreement and understanding between the Parties regarding the subject matter hereof and supersedes any prior representations, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter; provided that all terms and conditions of all preexisting contracts or agreements between the parties shall continue in full force and effect except as supplemented or modified by this contract. In the event of any inconsistency or conflict between the terms of this contract and any other agreement between the parties, the terms of this contract shall govern.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

1. CONTRACTOR:

CONTRACTOR certifies that the appropriate persons have executed the contract on behalf of CONTRACTOR as required by applicable articles, by-laws, resolutions or ordinances. (If a corporation with more than one individual serving as corporate officer, two corporate officers must execute)
<i>By</i>
<i>Title</i>
<i>Date</i>

2. STATE:

Person signing certifies that applicable procurement policies have been followed. Where contracts and amendments exceed \$50,000, signature of state court administrator or deputy is also required.
<i>By</i>
<i>Title</i> Chief Information Officer
<i>Date</i>

<i>By</i>
<i>Title</i>
<i>Date</i>

3. Funds have been encumbered for State by:
STATE by:

<i>By</i>
<i>Title</i>
<i>Date</i>
<i>Contract No.</i>

<i>By</i>
<i>Title State Court Administrator or Deputy</i>
<i>Date</i>

4. Form and execution approved for

<i>By</i>
<i>Title</i>
<i>Date</i>

APPENDIX IV

**CONFIDENTIALITY, PARTICIPATION, AND ASSIGNMENT OF RIGHTS CONTRACT
(SAMPLE COPY)**

THIS CONTRACT, and amendments and supplements thereto, is between State of Minnesota, acting through its State Court Administrator's Office (hereinafter "STATE") and _____ [insert subcontractor full legal name and address] _____ (hereinafter "SUBCONTRACTOR").

Recitals

The STATE has entered in to STATE contract with ___ [enter general contractor full legal name] ___, for _____ [insert general description of services] _____ services ("the Project"), to be provided by [SUBCONTRACTOR]/[SUBCONTRACTOR's employee ___ insert employee name ___]. SUBCONTRACTOR'S participation in the Project requires, among other things, disclosure to CONTRACTOR of confidential STATE information and authorship by SUBCONTRACTOR of copyrightable subject matter which the STATE and SUBCONTRACTOR intend to be owned by the STATE. The STATE is willing to permit SUBCONTRACTOR to participate in the Project as an independent contractor under contract with ___ [enter general contractor full legal name] ___ pursuant to the terms and conditions set forth in this contract.

Contract

In consideration of the foregoing, of being permitted to participate in the Project under contract with ___ [enter general contractor full legal name] ___, SUBCONTRACTOR agrees as follows:

- I. **SCOPE OF, AND PAYMENT FOR, PARTICIPATION.** ___ [enter general contractor full legal name] ___ and SUBCONTRACTOR will determine the scope of SUBCONTRACTOR's engagement and the terms of their relationship with one another, and SUBCONTRACTOR will look solely to ___ [enter general contractor full legal name] ___ for payment under its contract with Integration Architects, Inc.

- II. **TERM AND TERMINATION.** This contract shall not be effective until approved as to form and execution by the Attorney General's representative, and upon such approval the effective date shall be deemed to be [___ insert start date here ___]. This contract shall continue in force and effect according to its terms. The STATE may terminate this contract at any time without penalty by giving five (5) working days written notice of termination to SUBCONTRACTOR. Unless otherwise terminated as herein provided, this contract shall

terminate as of midnight, [insert termination date here].

- III. **INDEPENDENT OBLIGATIONS.** The obligations of SUBCONTRACTOR under this contract are unconditional and do not depend upon the performance of any agreements, duties, obligations or terms outside this contract.
- IV. **ASSIGNMENT AND BINDING EFFECT.** Except as expressly authorized in this contract, SUBCONTRACTOR shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of the STATE. This contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any corporation or other legal entity into, by or with which SUBCONTRACTOR may be merged, acquired or consolidated or which may purchase all or substantially all of the business assets of SUBCONTRACTOR.
- V. **AMENDMENTS.** Any amendments to this contract shall be in writing and shall be executed by the same parties who executed the original contract, or their successors in office.
- VI. **LIABILITY.** SUBCONTRACTOR shall indemnify, save, and hold the STATE, its representatives and employees harmless from any and all claims or causes of action, including all attorney's fees incurred by the STATE, arising from the participation in the Project by SUBCONTRACTOR or SUBCONTRACTOR'S agents or employees. If SUBCONTRACTOR is an entity, SUBCONTRACTOR covenants and agrees that it shall obtain and maintain liability insurance with minimum limits of one million dollars (\$1,000,000) per claim, accident or occurrence, whichever is greater, covering injuries or damages caused by the acts or omissions of its employees. This clause shall not be construed to bar any legal remedies SUBCONTRACTOR may have for the STATE'S failure to fulfill its obligations pursuant to this contract.
- VII. **STATE AUDITS.** The books, records, documents, and accounting procedures and practices of the SUBCONTRACTOR relevant to this contract shall be subject to examination by the contracting department and the Legislative Auditor for a minimum period of six years from the termination of this contract. Records shall be sufficient to reflect all costs incurred in performance of this Contract.

VIII. CONFIDENTIALITY; DISCLOSURE AND USE.

A. **General.** SUBCONTRACTOR shall not disclose to any third party any information that is both: (1) made available by the STATE to SUBCONTRACTOR in order to permit SUBCONTRACTOR to participate in the Project or is created, gathered, generated or acquired in accordance with the Project; and (2) inaccessible to the public pursuant to the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time. If SUBCONTRACTOR receives a request to release the information referred to in this Clause, SUBCONTRACTOR must immediately notify the STATE. The STATE will give SUBCONTRACTOR instructions concerning the release of the information to the requesting party before the information is released. SUBCONTRACTOR shall ensure that all individuals assigned to perform services hereunder shall abide by the terms of this section VIII. Prior to assigning any individual to perform services under this contract, SUBCONTRACTOR shall require such individual to complete Part I of the Confidentiality and Disclosure of Interest form attached hereto as Appendix V, which is made a part of this contract by this reference.

B. **State Programs, Databases, Marks.** Without limiting paragraph A, above, SUBCONTRACTOR agrees to the following:

1. **State Programs.** The computer application programs made available by the STATE to SUBCONTRACTOR in order to permit SUBCONTRACTOR to participate in the Project are referred to herein as "State Programs." The STATE is the copyright owner of the State Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the State Programs, and all analysis and design specifications, programming specifications, source code, algorithms, and information contained in technical reference manuals pertaining to the State Programs, are trade secret information of the STATE. The computer operating systems software programs and other third party software licensed by the STATE, and related documentation, made available by the STATE to SUBCONTRACTOR in order to permit CONTRACTOR to participate in the Project, are subject to claims of trade

secret and copyright ownership by the respective licensors and will be treated by SUBCONTRACTOR in the same manner as trade secret information of the STATE. In addition, SUBCONTRACTOR will familiarize itself with and abide by the terms and conditions of the license agreements applicable to such third party software. Without limiting the foregoing, SUBCONTRACTOR may also be required to sign an appropriate confidentiality agreement with the STATE's software vendor if access to proprietary segments of the MNCIS application are necessary for SUBCONTRACTOR's work hereunder.

2. **State Databases.** The computer databases made available by the STATE to SUBCONTRACTOR in order to permit SUBCONTRACTOR to participate in the Project are referred to herein as "State Databases." The STATE is the copyright owner of the State Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the State Databases and to their structure, sequence and organization are trade secret information of the STATE. All information contained within the State Databases is sensitive, confidential information and will be treated by SUBCONTRACTOR in the same manner as trade secret information of the STATE.
3. **Marks.** The STATE claims that the marks "Total Court Information System," "TCIS," "MNCIS," "CrimNet," "SJIS," and "MARS" are trademarks and service marks of the STATE or of other agencies of the state of Minnesota. The marks "Total Court Information System," and "TCIS" are registered trademarks of the STATE. SUBCONTRACTOR shall neither have nor claim any right, title, or interest in or use of any trademark, service mark, or tradename owned or used by the STATE or other agencies of the state of Minnesota.
4. **Restrictions on Duplication, Disclosure and Use.** SUBCONTRACTOR will not, except as required for SUBCONTRACTOR'S participation in the Project, copy any part of the State Programs or State Databases, prepare any translations thereof or derivative works based thereon, use or disclose any trade secret information of the STATE, or use any trademark, service mark, or tradename of the STATE, in any way or for any purpose not specifically

and expressly authorized by this contract. As used herein, "trade secret information of the STATE" means any information or compilation of information possessed by the STATE, or developed by SUBCONTRACTOR in the performance of its obligations hereunder, which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of the STATE" does not, however, include information which was known to SUBCONTRACTOR prior to SUBCONTRACTOR'S receipt thereof, either directly or indirectly, from the STATE, information which is independently developed by SUBCONTRACTOR without reference to or use of information received from the STATE, or information which would not qualify as trade secret information under Minnesota law. It will not be a violation of this section for SUBCONTRACTOR to disclose any information received from the STATE pursuant to the order of a court or governmental authority of competent jurisdiction if SUBCONTRACTOR notifies the state immediately upon receipt by SUBCONTRACTOR of notice of the issuance of such an order.

5. **Proprietary Notices.** SUBCONTRACTOR will advise its employees and permitted subcontractors who are permitted access to any of the State Programs, State Databases, or trade secret information of the STATE of the restrictions upon duplication, disclosure and use contained in this contract. Without limiting the foregoing, SUBCONTRACTOR shall include in and/or on any copy or translation of, or derivative work based upon, any of the State Programs, the State Databases, or trade secret information of the STATE, or any part thereof, and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to SUBCONTRACTOR by the STATE, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

- C. **Inspection and Return of State Property.** All documents, encoded media, and other tangible items made available to CONTRACTOR by the STATE, or prepared, generated or created by SUBCONTRACTOR in SUBCONTRACTOR'S

participation in the Project, are and will be exclusively the property of the STATE and will be available for inspection by the STATE upon request. Upon completion of SUBCONTRACTOR'S participation in the Project, SUBCONTRACTOR will, upon the STATE'S request, promptly deliver to the STATE any or all such documents, encoded media and other items in its possession, including all complete or partial copies, recordings, abstracts, notes or reproductions of any kind made from or about such documents, media, items, or information contained therein. SUBCONTRACTOR and the STATE acknowledge that all computer operating systems software programs and other third party software licensed by the STATE, and related documentation, made available by the STATE to SUBCONTRACTOR in order to permit SUBCONTRACTOR to perform its obligations hereunder, or any translations, compilations, or partial copies thereof are and remain the property of the respective licensors.

D. **Injunctive Relief.** SUBCONTRACTOR acknowledges that the STATE will be irreparably harmed if SUBCONTRACTOR'S obligations under sections VIII and IX of this contract are not specifically enforced and that the STATE would not have an adequate remedy at law in the event of an actual or threatened violation by SUBCONTRACTOR of its obligations. Therefore, SUBCONTRACTOR agrees that the STATE shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violation or breach by SUBCONTRACTOR without the necessity of the STATE showing actual damages or that monetary damages would not afford an adequate remedy. SUBCONTRACTOR shall be liable to the State for reasonable attorney's fees incurred by the STATE in obtaining any relief pursuant to this section.

E. **Nondisclosure Indemnity.** Without limiting section VI, SUBCONTRACTOR agrees to indemnify, defend and save harmless the STATE and its agents, officers and employees from and against any and all claims by Third Parties that are determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted directly and proximately from SUBCONTRACTOR'S violation of the non-disclosure provisions hereof. The STATE shall provide SUBCONTRACTOR with prompt notice of any claim for which indemnification may be sought hereunder and shall cooperate in all reasonable respects with SUBCONTRACTOR in connection with any such claim. SUBCONTRACTOR shall be entitled to control the handling of any such claim and to defend or settle

any such claim, in its sole discretion, with counsel of its own choosing.

IX. RIGHTS IN AND TO INFORMATION, INVENTIONS, AND MATERIALS. In consideration of the facts that SUBCONTRACTOR'S participation in the Project will involve access to and development of information which shall be trade secret information of the STATE and may involve the development by SUBCONTRACTOR or SUBCONTRACTOR'S participation in the development of copyrightable and/or patentable subject matter which the parties intend be owned by the STATE:

- A. All right, title, and interest in and to any trade secret information of the STATE (as defined in sections VIII B. 1., 2., and 4. above) developed by SUBCONTRACTOR either individually or jointly with others, and which arises out of SUBCONTRACTOR'S participation in the Project, will be the property of the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE free and clear of any liens, claims, or other encumbrances.

- D. The STATE shall be the copyright owner of all copyrightable material that SUBCONTRACTOR shall conceive or originate, either individually or jointly with others, and which arises out of the performance of this contract, and of all elements and components thereof in which copyright protection can subsist. To the extent that any of the foregoing does not qualify as a "work made for hire" within the meaning and purview of section 101 of the United States Copyright Act, 17 U.S.C. § 101, SUBCONTRACTOR hereby transfers, assigns and conveys the exclusive copyright ownership thereof to the STATE, free and clear of any liens, claims or other encumbrances.

- E. All right, title, and interest in and to any invention which SUBCONTRACTOR first conceives or first reduces to practice either individually or jointly, and which arises out of SUBCONTRACTOR'S participation in the Project, will be the property of the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE along with ownership of any and all patents on the inventions anywhere in the world, free and clear of any liens, claims or other encumbrances. SUBCONTRACTOR agrees to disclose promptly any such invention to the STATE. This paragraph shall not apply to any invention for which no equipment, supplies, facility or trade secret information of the STATE (as defined in Sections

VIII B. 1., 2. and 4., above) was used and which was developed entirely on SUBCONTRACTOR'S own time, and a) which does not relate i) directly to the business of the STATE or ii) to the STATE'S actual or demonstrably anticipated research or development, or b) which does not result from any work performed or materials provided by SUBCONTRACTOR for the STATE.

- F. SUBCONTRACTOR will execute all documents and perform all other acts that the STATE may reasonably request in order to assist the STATE in perfecting its rights in and to the trade secret information of the STATE and the copyrightable and patentable subject matter identified herein, in any and all countries.
- X. **CONFLICT OF INTEREST SCREENING.** Prior to assigning any individual to perform services hereunder, the SUBCONTRACTOR shall take reasonable steps to determine whether the individual (or his or her immediate family members) has an interest in any pending or threatened litigation or proceeding in any Minnesota state court. Such steps shall include, without limitation, requiring all individuals assigned to perform services hereunder to complete part II of the Confidentiality and Disclosure of Interest Agreement attached as Appendix V, which is attached to and made a part of this Agreement. The SUBCONTRACTOR acknowledges that the STATE may immediately disqualify any such individual from performing services hereunder, and the SUBCONTRACTOR shall ensure that no such disqualified individual shall have any further access to the confidential information of the STATE. If the SUBCONTRACTOR becomes aware of any individual's interest (or that of his or her immediate family members) in any threatened or pending litigation or proceeding in any Minnesota state court, the SUBCONTRACTOR shall immediately notify the STATE of such interest. The SUBCONTRACTOR shall bear the cost of orienting all personnel replacements of the SUBCONTRACTOR
- XI. [RESERVED FOR FUTURE USE]
- XII. **ANTITRUST.** SUBCONTRACTOR hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with the Project resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.
- XIII. **OTHER PROVISIONS.**

A. **Warranties.**

1. **Original Works.** In participating in the Project, SUBCONTRACTOR will not use or incorporate any trade secret information or copyrighted works of authorship of SUBCONTRACTOR or of any third party, and except for components already in the public domain (without any license restrictions attached thereto), all software, documentation, information and other materials provided or furnished by SUBCONTRACTOR in performing the duties under this contract will be original and will not violate or infringe upon the rights of any third party.

2. **Professional Services; Status; Conflicts of Interest.** SUBCONTRACTOR represents and warrants to the STATE that [SUBCONTRACTOR]/[all services related to the Project will be performed exclusively by SUBCONTRACTOR's employee insert employee name]_____who is and will be acting as an employee of SUBCONTRACTOR within the meaning and purview of the "works made for hire" provision of the Copyright Laws of the United States of America andwho:]:
 - a. has the proper training, skill and background so as to be able to perform all professional integration services required for the Project in a competent and professional manner, and all such work shall be of quality; and

 - b. has obtained lawful permanent residence in the United States of America with a right to live and work permanently in the United States of America.

3. **Mutual Representations and Warranties.** SUBCONTRACTOR and the STATE each represent and warrant to the other that: a) it has the full right, power and authority to enter into this contract and to perform fully all of its obligations hereunder; b) it is free of any obligation or restriction that would prevent it from entering into this contract or from performing fully any of its

obligations hereunder; and c) it has not entered into and will not enter into any contract which would impede the full performance of its obligations hereunder or would in any way limit or restrict the rights of the other under this contract.

- B. Patent and Copyright Indemnity.** Without limiting section VI, SUBCONTRACTOR shall indemnify the STATE and hold it harmless against any claim that the work performed or material provided by SUBCONTRACTOR'S participation in the Project infringes or violates the patent, copyright, or trade secret rights of any third party. SUBCONTRACTOR shall pay any and all resulting costs, expenses (including attorney's fees), damages and/or liabilities associated with or resulting from any such claim.
- D. Relationship of the Parties.** SUBCONTRACTOR is an independent contractor. SUBCONTRACTOR and CONTRACTOR'S employees and agents shall not be deemed for any purpose to be an employee of the STATE. Neither SUBCONTRACTOR nor the STATE shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.
- E. Publicity.** Any publicity regarding the subject matter of this contract must identify the STATE as the sponsoring agency and must not be released without the prior written approval from the STATE'S Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for SUBCONTRACTOR individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract. Notwithstanding anything in this contract to the contrary, either party may disclose to the public the existence of this contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.
- F. Endorsement.** SUBCONTRACTOR must not claim that the STATE endorses its products or services.

G. Non-Exclusivity. This contract shall not preclude SUBCONTRACTOR from developing materials outside this contract that are competitive, irrespective of their similarity to materials delivered to the STATE under SUBCONTRACTOR'S participation in the Project; provided, however, that such materials prepared by SUBCONTRACTOR shall not violate the nondisclosure and intellectual property provisions of this contract. Nothing in this contract shall be construed as precluding or limiting in any way the right of SUBCONTRACTOR to provide computer consulting and programming services or other services of any kind to any person or entity as SUBCONTRACTOR in its sole discretion deems appropriate.

H. Notices. Any written notice hereunder shall be deemed to have been received when: (A) personally delivered; (B) sent by confirmed facsimile transmission or telegram; (C) sent by commercial overnight courier with written verification of receipt; or (D) seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at: (1) the address first set forth herein, if to SUBCONTRACTOR; (2) at 145 Minnesota Judicial Center, St. Paul, MN 55155, if to the STATE, with a copy to Legal Counsel Division, 140 Minnesota Judicial Center, 25 Rev. Martin Luther King Jr., Blvd. St. Paul, MN 55155; or (3) at such other address of which written notice has been given in accordance herewith.

I. Facilities and Use Conditions. Without limiting SUBCONTRACTOR'S responsibilities under any other section of this contract, to the extent that SUBCONTRACTOR utilizes STATE provided on-site facilities (including, but not limited to, computers, desks, Internet connections, etc.) to perform SUBCONTRACTOR'S duties under this contract, SUBCONTRACTOR must comply with all policies of the STATE and the Minnesota judicial branch as they relate to the acceptable use or operation of STATE facilities, including, without limitation, the Minnesota State Court System Policies on the Use of the Internet and Other Electronic Communication Tools and Drug Free Workplace as the same may be amended and replaced from time to time.

J. Miscellaneous.

1. The provisions of sections III, IV, VI, VII, VIII, IX, XII, and XIII shall

survive any cancellation or termination of this contract, as shall any other provisions which by their nature would be intended or expected to survive such cancellation or termination.

2. Captions are for convenient reference and do not constitute a part of this contract.
3. The failure by either Party at any time to enforce any of the provisions of this contract or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this contract. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.
4. This contract shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States of America and of the State of Minnesota, without regard to Minnesota's choice of law provisions. Any action arising out of or relating to this contract, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. SUBCONTRACTOR hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.
5. Every provision of this contract shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this contract so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this contract, and all other provisions shall remain in full force and effect.
6. This contract sets forth the entire agreement and understanding between the Parties regarding the subject matter hereof and supersedes any prior representations, statements, proposals, negotiations, discussions,

understandings, or agreements regarding the same subject matter; provided that all terms and conditions of all preexisting contracts or agreements between the parties shall continue in full force and effect except as supplemented or modified by this contract. In the event of any inconsistency or conflict between the terms of this contract and any other agreement between the parties, the terms of this contract shall govern.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

1. SUBCONTRACTOR:

SUBCONTRACTOR certifies that the appropriate persons have executed the contract on behalf of SUBCONTRACTOR as required by applicable articles, by-laws, resolutions or ordinances. (If a corporation having more than one individual serving as corporate officers, two corporate officers must sign.)

By:
Title:
Date:

2. STATE:

By:
Title:
Date:

3. Approved as to form and execution by the STATE'S Legal Counsel Division:

By:
Title:
Date:

By:
Title:
Date:

ACKNOWLEDGMENT

 [enter general contractor full legal name] hereby acknowledges and approves the foregoing and agrees that the same shall supersede any inconsistent provisions of any agreement between [enter general contractor full legal name] and [insert subcontractor full legal name] .

 [enter general contractor full legal name]

By:
Title:
Date:

APPENDIX V

CONFIDENTIALITY AND DISCLOSURE OF INTEREST AGREEMENT

(Sample Copy)

I. Confidentiality.

I, _____, an employee of CONTRACTOR (“CONTRATOR”), acknowledge that CONTRACTOR has been granted certain access to non-public data and records of the state of Minnesota, Fourth Judicial District (the “STATE”) pursuant to a Document Imaging Contract (the “Imaging Contract”) between CONTRACTOR and the STATE. I further acknowledge that such information has tangible value, contains valuable trade secrets, copyrights and confidential information of the STATE and other parties.

To the extent that I come into possession of any non-public data or records (including without limitation non-public data or records as defined in the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time) or any proprietary or confidential information of the STATE or any third party, I will not use any such information for any purpose other than performance of the Imaging Contract and will not disclose any such information to any third party without the STATE’s consent, except: (a) as may be required by law, regulation, judicial or administrative process; or (b) as required in litigation pertaining to this Agreement, provided the STATE is given advance notice of such intended disclosure in order to permit the STATE the opportunity to seek a protective order; or (c) to the extent such information (i) becomes publicly available (including, without limitation, any information filed with any governmental agency and available to the public) other than as a result of a disclosure by CONTRACTOR in breach of its obligations under the Imaging Agreement or disclosure by me in breach of this Agreement, (ii) becomes available to CONTRACTOR or to me on a non-confidential basis from a source other than the STATE, which is not prohibited from disclosing such information to CONTRACTOR or to me by obligation to the STATE, (iii) is known by CONTRACTOR or to me prior to its receipt from the STATE without any obligation of confidentiality with respect thereto, or (iv) is developed by CONTRACTOR or by me independently of any disclosures made by the STATE to CONTRACTOR or to me of such information.

In addition, I shall not sell, resell, disclose, redisclose, recombine, reconfigure or retain the Documents, Information, Information Databases, or Original Documents transmitted to or from the STATE under the Imaging Contract except as otherwise expressly provided in the Imaging contract, subject to the exceptions set forth in items (a), (b) and (c) in the preceding paragraph. I agree that my obligations with respect to the confidentiality and security of all information disclosed to me shall survive the termination of any agreement or relationship between the STATE and CONTRACTOR and/or me.

I acknowledge and agree that a breach by me of any of the covenants set forth in this Agreement will cause irreparable injury to the STATE or others for which damages, even if available, will not constitute an adequate remedy. Accordingly, I agree that the STATE, in addition to any other remedy available at law or in equity, shall be entitled to the issuance of injunctive relief (including, without limitation, specific performance) in order to enforce the covenants and agreements contained herein.

If attorneys’ fees or other costs are incurred by the STATE to secure performance of any obligations under this Agreement, or to establish damages for the breach thereof or to obtain any

other appropriate relief, whether by way of prosecution or defense, and the STATE is the prevailing party, the STATE will be entitled to recover from me reasonable attorneys' fees and costs incurred in connection therewith.

This Agreement shall be interpreted in accordance with the laws of the state of Minnesota. Any action arising out of or relating to this Agreement, its performance, enforcement or breach, will be venued in a state court situated within Ramsey County, Minnesota.

ACKNOWLEDGED AND ACCEPTED:

CONTRACTOR

By: _____

Employee Signature

Name: _____

Name – please print

Date: _____

Title: _____

Date: _____

II. Disclosure of Interest.

I, _____ (Print Name), hereby certify that neither I, nor any member of my immediate family, is a party to any pending or threatened lawsuit or proceeding in any Minnesota state court.

(Signature)

(Date)

APPENDIX VI

(MUST BE COMPLETED AND SUBMITTED WITH RESPONSE)

PRICE SHEET

Digital Imaging Services Request for Proposals

(Proposer Name)

Volume (No. of Images To Be Processed)	≤ 1 Million	≤ 3 Million	≤ 6 Million	≥ 6 Million
Implementation Cost (if applicable)				
Conversion Cost Per Image (Delivered* Cost)				
Index Building Cost (Per Image) 2 Indexing Fields 3 Indexing Fields 4 Indexing Fields 5 Indexing Fields 6 Indexing Fields or more				
Data Backup Cost per Gigabyte				
Shipping Cost (From Vendor Site to Zip Code: 55487) <u>Describe Shipping Method</u>	<u>To: 55487</u>	<u>To: 55487</u>	<u>To: 55487</u>	<u>To: 55487</u>
On-site Service Rate (Per Hour) (Total including Staffing, Equipment, Mobilization)				

Volume (No. of Images To Be Processed)	≤ 1 Million	≤ 3 Million	≤ 6 Million	≥ 6 Million
Redaction Per Image Charge (Optional)				
File Destruction Charges Per Pound (Optional)				
Other Charges (Specify)				

Proposers may supply additional information. If the actual price break per volume differs from that which is provided above, Proposers may provide such volume figures in addition to the “Volume” provided above, and specify costs according to the additional volume breaks.

*An image is deemed to have been “delivered” when it has been successfully converted pursuant to all State specifications, and an appropriate readable media containing the image has been physically received by the State contact person to be specified.

State may also consider a data redaction service as an optional service. Provide specifics in the proposal, including, but not limited to, the price and redaction method(s) used.

